

111TH CONGRESS
1ST SESSION

H. R. 3508

To amend the Internal Revenue Code of 1986 to provide for improved treatment of HSA account provisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. PAULSEN (for himself, Mr. AKIN, Mr. BOUSTANY, Mr. BROWN of South Carolina, Mrs. MCMORRIS RODGERS, Mr. RYAN of Wisconsin, Mr. BRADY of Texas, Mr. CONAWAY, Mr. FRANKS of Arizona, Mr. PRICE of Georgia, Mr. KIRK, Mr. ROSKAM, Mrs. BIGGERT, Mr. MCCARTHY of California, Mr. CASSIDY, Mrs. LUMMIS, Mr. ROONEY, Mr. DAVIS of Kentucky, Mr. LANCE, Mr. PENCE, and Mrs. BACHMANN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for improved treatment of HSA account provisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Healthy Savings Act
5 of 2009”.

1 **SEC. 2. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**
 2 **TRIBUTIONS TO THE SAME HSA ACCOUNT.**

3 (a) IN GENERAL.—Paragraph (3) of section 223(b)
 4 of the Internal Revenue Code of 1986 is amended by add-
 5 ing at the end the following new subparagraph:

6 “(C) SPECIAL RULE WHERE BOTH
 7 SPOUSES ARE ELIGIBLE INDIVIDUALS WITH 1
 8 ACCOUNT.—If—

9 “(i) an individual and the individual’s
 10 spouse have both attained age 55 before
 11 the close of the taxable year, and

12 “(ii) the spouse is not an account ben-
 13 eficiary of a health savings account as of
 14 the close of such year,
 15 the additional contribution amount shall be 200
 16 percent of the amount otherwise determined
 17 under subparagraph (B).”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to taxable years beginning after
 20 the date of the enactment of this Act.

21 **SEC. 3. PROVISIONS RELATING TO MEDICARE.**

22 (a) INDIVIDUALS OVER AGE 65 ONLY ENROLLED IN
 23 MEDICARE PART A.—Section 223(b)(7) of the Internal
 24 Revenue Code of 1986 (relating to contribution limitation
 25 on Medicare eligible individuals) is amended by adding at
 26 the end the following new sentence: “This paragraph shall

1 not apply to any individual during any period the individ-
 2 ual's only entitlement to such benefits is an entitlement
 3 to hospital insurance benefits under part A of title XVIII
 4 of such Act pursuant to an enrollment for such hospital
 5 insurance benefits under section 226(a)(1) of such Act.”.

6 (b) MEDICARE BENEFICIARIES PARTICIPATING IN
 7 MEDICARE ADVANTAGE MSA MAY CONTRIBUTE THEIR
 8 OWN MONEY TO THEIR MSA.—Subsection (b) of section
 9 138 of such Code is amended by striking paragraph (2)
 10 and by redesignating paragraphs (3) and (4) as para-
 11 graphs (2) and (3), respectively.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to taxable years beginning after
 14 the date of the enactment of this Act.

15 **SEC. 4. INDIVIDUALS ELIGIBLE FOR VETERANS BENEFITS**
 16 **FOR A SERVICE-CONNECTED DISABILITY.**

17 (a) IN GENERAL.—Section 223(c)(1) of the Internal
 18 Revenue Code of 1986 (defining eligible individual) is
 19 amended by adding at the end the following new subpara-
 20 graph:

21 “(C) SPECIAL RULE FOR INDIVIDUALS ELI-
 22 GIBLE FOR CERTAIN VETERANS BENEFITS.—
 23 For purposes of subparagraph (A)(ii), an indi-
 24 vidual shall not be treated as covered under a
 25 health plan described in such subparagraph

merely because the individual receives periodic hospital care or medical services for a service-connected disability under any law administered by the Secretary of Veterans Affairs but only if the individual is not eligible to receive such care or services for any condition other than a service-connected disability.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5. INDIVIDUALS ELIGIBLE FOR INDIAN HEALTH SERVICE ASSISTANCE.

(a) **IN GENERAL.**—Section 223(c)(1) of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new subparagraph:

“(D) **SPECIAL RULE FOR INDIVIDUALS ELIGIBLE FOR ASSISTANCE UNDER INDIAN HEALTH SERVICE PROGRAMS.**—For purposes of subparagraph (A)(ii), an individual shall not be treated as covered under a health plan described in such subparagraph merely because the individual receives hospital care or medical services under a medical care program of the Indian Health Service or of a tribal organization.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

4 **SEC. 6. FSA AND HRA TERMINATION TO FUND HSAS.**

5 (a) ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA
6 PARTICIPANTS.—Section 223(c)(1)(B) of the Internal
7 Revenue Code of 1986 is amended—

8 (1) by striking “and” at the end of clause (ii),

9 (2) by striking the period at the end of clause

10 (iii) and inserting “, and”, and

11 (3) by inserting after clause (iii) the following
12 new clause:

13 “(iv) coverage under a health flexible
14 spending arrangement or a health reim-
15 bursement arrangement in the plan year a
16 qualified HSA distribution as described in
17 section 106(e) is made on behalf of the in-
18 dividual if after the qualified HSA dis-
19 tribution is made and for the remaining
20 duration of the plan year, the coverage
21 provided under the health flexible spending
22 arrangement or health reimbursement ar-
23 rangement is converted to—

24 “(I) coverage that does not pay
25 or reimburse any medical expense in-

1 curred before the minimum annual de-
2 ductible under section 223(c)(2)(A)(i)
3 (prorated for the period occurring
4 after the qualified HSA distribution is
5 made) is satisfied,

6 “(II) coverage that, after the
7 qualified HSA distribution is made,
8 does not pay or reimburse any med-
9 ical expense incurred after the quali-
10 fied HSA distribution is made other
11 than preventive care as defined in sec-
12 tion 223(c)(2)(3),

13 “(III) coverage that, after the
14 qualified HSA distribution is made,
15 pays or reimburses benefits for cov-
16 erage described in section
17 223(c)(1)(B)(ii) (but not through in-
18 surance or for long-term care serv-
19 ices),

20 “(IV) coverage that, after the
21 qualified HSA distribution is made,
22 pays or reimburses benefits for per-
23 mitted insurance as defined in section
24 223(c)(1)(B)(i) or coverage described

1 in section 223(c)(1)(B)(ii) (but not
2 for long-term care services),

3 “(V) coverage that, after the
4 qualified HSA distribution is made,
5 pays or reimburses only those medical
6 expenses incurred after an individual’s
7 retirement (and no expenses incurred
8 before retirement), or

9 “(VI) coverage that, after the
10 qualified HSA distribution is made, is
11 suspended, pursuant to an election
12 made on or before the date the indi-
13 vidual elects a qualified HSA distribu-
14 tion or, if later, on the date of the in-
15 dividual enrolls in a high deductible
16 health plan (as defined in section
17 223(c)(2)), that does not pay or reim-
18 burse, at any time, any medical ex-
19 pense incurred during the suspension
20 period except as defined in subclauses
21 (I) through (V) above.”.

22 (b) QUALIFIED HSA DISTRIBUTION SHALL NOT AF-
23 FECT FLEXIBLE SPENDING ARRANGEMENT.—Section
24 106(e)(1) of such Code is amended to read as follows:

1 “(1) IN GENERAL.—A plan shall not fail to be
 2 treated as a health flexible spending arrangement
 3 under this section, section 105, or section 125, or as
 4 a health reimbursement arrangement under this sec-
 5 tion or section 105, merely because such plan pro-
 6 vides for a qualified HSA distribution.”.

7 (c) FSA BALANCES AT YEAR END SHALL NOT FOR-
 8 FEIT.—Section 125(d)(2) of such Code is amended by
 9 adding at the end the following new subparagraph:

10 “(E) EXCEPTION FOR QUALIFIED HSA DIS-
 11 TRIBUTIONS.—Subparagraph (A) shall not
 12 apply to the extent that there is an amount re-
 13 maining in a health flexible spending account at
 14 the end of a plan year that an individual elects
 15 to contribute to a health savings account pursu-
 16 ant to a qualified HSA distribution (as defined
 17 in section 106(e)(2)).”.

18 (d) SIMPLIFICATION OF LIMITATIONS ON FSA AND
 19 HRA ROLLOVERS.—Section 106(e)(2) of such Code (re-
 20 lating to qualified HSA distribution) is amended to read
 21 as follows:

22 “(2) QUALIFIED HSA DISTRIBUTION.—

23 “(A) IN GENERAL.—The term ‘qualified
 24 HSA distribution’ means a distribution from a
 25 health flexible spending arrangement or health

1 reimbursement arrangement to the extent that
2 such distribution does not exceed the lesser
3 of—

4 “(i) the balance in such arrangement
5 as of the date of such distribution, or

6 “(ii) the amount determined under
7 subparagraph (B).

8 Such term shall not include more than 1 dis-
9 tribution with respect to any arrangement.

10 “(B) DOLLAR LIMITATIONS.—

11 “(i) DISTRIBUTIONS FROM A HEALTH
12 FLEXIBLE SPENDING ARRANGEMENT.—A
13 qualified HSA distribution from a health
14 flexible spending arrangement shall not ex-
15 ceed the applicable amount.

16 “(ii) DISTRIBUTIONS FROM A HEALTH
17 REIMBURSEMENT ARRANGEMENT.—A
18 qualified HSA distribution from a health
19 reimbursement arrangement shall not ex-
20 ceed—

21 “(I) the applicable amount di-
22 vided by 12, multiplied by

23 “(II) the number of months dur-
24 ing which the individual is a partici-

1 pant in the health reimbursement ar-
2 rangement.

3 “(iii) APPLICABLE AMOUNT.—For
4 purposes of this subparagraph, the applica-
5 ble amount is—

6 “(I) \$2,250 in the case of an eli-
7 gible individual who has self-only cov-
8 erage under a high deductible health
9 plan at the time of such distribution,
10 and

11 “(II) \$4,500 in the case of an eli-
12 gible individual who has family cov-
13 erage under a high deductible health
14 plan at the time of such distribu-
15 tion.”.

16 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE
17 TO MAINTAIN HIGH DEDUCTIBLE HEALTH PLAN COV-
18 ERAGE.—Section 106(e) of such Code is amended—

19 (1) by striking paragraph (3) and redesignating
20 paragraphs (4) and (5) as paragraphs (3) and (4),
21 respectively, and

22 (2) by striking subparagraph (A) of paragraph
23 (3), as so redesignated, and redesignating subpara-
24 graphs (B) and (C) of such paragraph as subpara-
25 graphs (A) and (B) thereof, respectively.

1 (f) LIMITED PURPOSE FSAS AND HRAS.—Section
2 106(e) of such Code, as amended by this section, is
3 amended by adding at the end the following new para-
4 graph:

5 “(5) LIMITED PURPOSE FSAS AND HRAS.—A
6 plan shall not fail to be a health flexible spending
7 arrangement or health reimbursement arrangement
8 under this section or section 105 merely because the
9 plan converts coverage for individuals who enroll in
10 a high deductible health plan described in section
11 223(c)(2) to coverage described in section
12 223(c)(1)(B)(iv). Coverage for such individuals may
13 be converted as of the date of enrollment in the high
14 deductible health plan, without regard to the period
15 of coverage under the health flexible spending ar-
16 rangement or health reimbursement arrangement,
17 and without requiring any change in coverage to in-
18 dividuals who do not enroll in a high deductible
19 health plan.”.

20 (g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-
21 OF-LIVING.—Section 106(e) of such Code, as amended by
22 this section, is amended by adding at the end the following
23 new paragraph:

24 “(6) COST-OF-LIVING ADJUSTMENT.—

1 “(A) IN GENERAL.—In the case of any
 2 taxable year beginning after December 31,
 3 2010, each of the dollar amounts in paragraph
 4 (2)(B)(iii) shall be increased by an amount
 5 equal to such dollar amount, multiplied by the
 6 cost-of-living adjustment determined under sec-
 7 tion 1(f)(3) for the calendar year in which such
 8 taxable year begins by substituting ‘calendar
 9 year 2009’ for ‘calendar year 1992’ in subpara-
 10 graph (B) thereof.

11 “(B) ROUNDING.—If any increase under
 12 paragraph (1) is not a multiple of \$50, such in-
 13 crease shall be rounded to the nearest multiple
 14 of \$50.”.

15 (h) DISCLAIMER OF DISQUALIFYING COVERAGE.—
 16 Section 223(c)(1)(B) of such Code, as amended by this
 17 section, is amended—

18 (1) by striking “and” at the end of clause (iii),

19 (2) by striking the period at the end of clause
 20 (iv) and inserting “, and”, and

21 (3) by inserting after clause (iv) the following
 22 new clause:

23 “(v) any coverage (including prospec-
 24 tive coverage) under a health plan that is
 25 not a high deductible health plan which is

1 disclaimed in writing, at the time of the
2 creation or organization of the health sav-
3 ings account, including by execution of a
4 trust described in subsection (d)(1)
5 through a governing instrument that in-
6 cludes such a disclaimer, or by acceptance
7 of an amendment to such a trust that in-
8 cludes such a disclaimer.”.

9 (i) **EFFECTIVE DATE.**—The amendments made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

12 **SEC. 7. PURCHASE OF HEALTH INSURANCE FROM HSA AC-**
13 **COUNT.**

14 (a) **IN GENERAL.**—Paragraph (2) of section 223(d)
15 of the Internal Revenue Code of 1986 (defining qualified
16 medical expenses) is amended—

17 (1) by striking subparagraphs (B) and (C),
18 (2) by inserting “ and including payment for in-
19 surance)” after “section 213(d)”.

20 (b) **EFFECTIVE DATE.**—The amendments made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **SEC. 8. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**
2 **INCURRED BEFORE ESTABLISHMENT OF AC-**
3 **COUNT.**

4 (a) IN GENERAL.—Paragraph (2) of section 223(d)
5 of the Internal Revenue Code of 1986, as amended by this
6 Act, is amended by adding at the end the following new
7 subparagraph:

8 “(B) CERTAIN MEDICAL EXPENSES IN-
9 CURRED BEFORE ESTABLISHMENT OF ACCOUNT
10 TREATED AS QUALIFIED.—An expense shall not
11 fail to be treated as a qualified medical expense
12 solely because such expense was incurred before
13 the establishment of the health savings account
14 if such expense was incurred—

15 “(i) during either—

16 “(I) the taxable year in which the
17 health savings account was estab-
18 lished, or

19 “(II) the preceding taxable year
20 in the case of a health savings ac-
21 count established after the taxable
22 year in which such expense was in-
23 curred but before the time prescribed
24 by law for filing the return for such
25 taxable year (not including extensions
26 thereof), and

1 “(ii) for medical care of an individual
2 during a period that such individual was
3 covered by a high deductible health plan
4 and met the requirements of subsection
5 (c)(1)(A)(ii) (after application of sub-
6 section (c)(1)(B)).”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to health savings accounts estab-
9 lished during taxable years beginning after the date of the
10 enactment of this Act.

11 **SEC. 9. PREVENTIVE CARE PRESCRIPTION DRUG CLARI-**
12 **FICATION.**

13 (a) CLARIFY USE OF DRUGS IN PREVENTIVE
14 CARE.—Subparagraph (C) of section 223(c)(2) of the In-
15 ternal Revenue Code of 1986 is amended by adding at the
16 end the following: “Preventive care shall include prescrip-
17 tion and over-the-counter drugs and medicines which have
18 the primary purpose of preventing the onset of, further
19 deterioration from, or complications associated with
20 chronic conditions, illnesses, or diseases.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years beginning after
23 the date of the enactment of this Act.

1 **SEC. 10. QUALIFIED MEDICAL EXPENSES.**

2 (a) CERTAIN EXERCISE EQUIPMENT AND PHYSICAL
3 FITNESS PROGRAMS TREATED AS MEDICAL CARE.—

4 (1) IN GENERAL.—Subsection (d) of section
5 213 of the Internal Revenue Code of 1986 is amend-
6 ed by adding at the end the following new para-
7 graph:

8 “(12) EXERCISE EQUIPMENT AND PHYSICAL
9 FITNESS PROGRAMS.—

10 “(A) IN GENERAL.—The term ‘medical
11 care’ shall include amounts paid—

12 “(i) to purchase or use equipment
13 used in a program (including a self-di-
14 rected program) of physical exercise,

15 “(ii) to participate, or receive instruc-
16 tion, in a program of physical exercise, and

17 “(iii) for membership dues in a fitness
18 club the primary purpose of which is to
19 provide access to equipment and facilities
20 for physical exercise.

21 “(B) LIMITATION.—Amounts treated as
22 medical care under subparagraph (A) shall not
23 exceed \$1,000 with respect to any individual for
24 any taxable year.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection shall apply to taxable years begin-
3 ning after the date of the enactment of this Act.

4 (b) CERTAIN NUTRITIONAL AND DIETARY SUPPLE-
5 MENTS TO BE TREATED AS MEDICAL CARE.—

6 (1) IN GENERAL.—Subsection (d) of section
7 213 of such Code, as amended by subsection (a), is
8 amended by adding at the end the following new
9 paragraph:

10 “(13) NUTRITIONAL AND DIETARY SUPPLE-
11 MENTS.—

12 “(A) IN GENERAL.—The term ‘medical
13 care’ shall include amounts paid to purchase
14 herbs, vitamins, minerals, homeopathic rem-
15 edies, meal replacement products, and other di-
16 etary and nutritional supplements.

17 “(B) LIMITATION.—Amounts treated as
18 medical care under subparagraph (A) shall not
19 exceed \$1,000 with respect to any individual for
20 any taxable year.

21 “(C) MEAL REPLACEMENT PRODUCT.—
22 For purposes of this paragraph, the term ‘meal
23 replacement product’ means any product that—

24 “(i) is permitted to bear labeling mak-
25 ing a claim described in section 403(r)(3)

1 of the Federal Food, Drug, and Cosmetic
2 Act, and

3 “(ii) is permitted to claim under such
4 section that such product is low in fat and
5 is a good source of protein, fiber, and mul-
6 tiple essential vitamins and minerals.”.

7 (2) EFFECTIVE DATE.—The amendment made
8 by this subsection shall apply to taxable years begin-
9 ning after the date of the enactment of this Act.

○